

CLERK, UNITED STATES DISTRICT COURT

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TRENTON, NJ 08608

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David L. Womach, SBI # 1569275-537775  
New Jersey State Prison  
PO box 861  
Trenton, NJ 08625

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WILLIAM T. WALSH  
CLERK

## Other Orders/Judgments

3:10-cv-02932-AET -TJB WOMACK v. MOLEINS et al

**U.S. District Court**

**District of New Jersey [LIVE]**

### Notice of Electronic Filing

The following transaction was entered on 6/14/2010 at 3:35 PM EDT and filed on 6/14/2010

**Case Name:** WOMACK v. MOLEINS et al

**Case Number:** 3:10-cv-02932-AET -TJB

**Filer:**

**Document Number:** 2

**Docket Text:**

**MEMORANDUM OPINION. Signed by Judge Anne E. Thompson on 6/11/2010. (gxh)**

**3:10-cv-02932-AET -TJB Notice has been electronically mailed to:**

**3:10-cv-02932-AET -TJB Notice will not be electronically mailed to::**

DAVID L. WOMACK  
SBI, 1569275-537775  
NEW JERSEY STATE PRISON  
PO BOX 861  
TRENTON, NJ 08625

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1046708974 [Date=6/14/2010] [FileNumber=4267250-0]  
][769322ec48761d76341034b00f2331edc63b946ccc940f19e4a490709067afed7c7  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

DAVID L. WOMACK, :  
 : Civil Action No. 10-2932 (AET)  
Plaintiff, :  
 :  
v. : **MEMORANDUM OPINION**  
 :  
WILLIAM J. MOLEINS, et al., :  
 :  
Defendants. :

**APPEARANCES:**

David L. Womack  
SBI 1569275-537775  
New Jersey State Prison  
PO Box 861  
Trenton, NJ 08625  
Plaintiff pro se

**THOMPSON**, District Judge

Plaintiff David L. Womack, a prisoner confined at New Jersey State Prison, seeks to bring this civil action in forma pauperis, without prepayment of fees or security, asserting claims pursuant to 42 U.S.C. § 1983.

Civil actions brought in forma pauperis are governed by 28 U.S.C. § 1915. The Prison Litigation Reform Act of 1995, Pub. L. No. 104-135, 110 Stat. 1321 (April 26, 1996) (the "PLRA"), which amends 28 U.S.C. § 1915, establishes certain financial requirements for prisoners who are attempting to bring a civil action or file an appeal in forma pauperis.

Under the PLRA, a prisoner seeking to bring a civil action in forma pauperis must submit an affidavit, including a statement

of all assets, which states that the prisoner is unable to pay the fee. 28 U.S.C. § 1915(a)(1). The prisoner also must submit a certified copy of his inmate trust fund account statement(s) for the six-month period immediately preceding the filing of his complaint. 28 U.S.C. § 1915(a)(2). The prisoner must obtain this certified statement from the appropriate official of each prison at which he was or is confined. Id.

Even if the prisoner is granted in forma pauperis status, the prisoner must pay the full amount of the \$350 filing fee in installments. 28 U.S.C. § 1915(b)(1). In each month that the amount in the prisoner's account exceeds \$10.00, until the \$350.00 filing fee is paid, the agency having custody of the prisoner shall assess, deduct from the prisoner's account, and forward to the Clerk of the Court an installment payment equal to 20 % of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2).

Plaintiff may not have known when he submitted his complaint that he must pay the filing fee, and that even if the full filing fee, or any part of it, has been paid, the Court must dismiss the case if it finds that the action: (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B) (in forma pauperis actions). See also 28 U.S.C. § 1915A (dismissal of actions in

which prisoner seeks redress from a governmental defendant); 42 U.S.C. § 1997e (dismissal of prisoner actions brought with respect to prison conditions). If the Court dismisses the case for any of these reasons, the PLRA does not suspend installment payments of the filing fee or permit the prisoner to get back the filing fee, or any part of it, that has already been paid.

If the prisoner has, on three or more prior occasions while incarcerated, brought in federal court an action or appeal that was dismissed on the grounds that it was frivolous or malicious, or that it failed to state a claim upon which relief may be granted, he cannot bring another action in forma pauperis unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

In this action, Plaintiff failed to submit an in forma pauperis application as required by 28 U.S.C. § 1915(a)(1), (2), including a certified account statement. Plaintiff provided no documentation whatsoever in support of an in forma pauperis application but did not pay the filing fee.

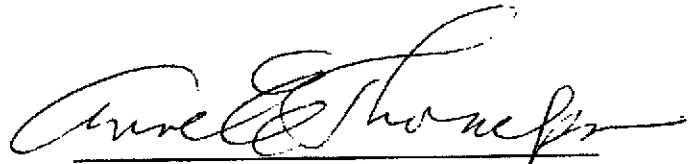
The allegations of the Complaint do not suggest that Plaintiff is in imminent danger of serious physical injury.

#### CONCLUSION

For the reasons set forth above, Plaintiff's Complaint will be denied without prejudice and the Clerk of the Court will be ordered to administratively terminate this action, without filing

the complaint or assessing a filing fee. Plaintiff will be granted leave to move to re-open within 30 days.<sup>1</sup>

An appropriate Order will be entered.



Anne E. Thompson  
United States District Judge

Dated:

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<sup>1</sup> Such an administrative termination is not a "dismissal" for purposes of the statute of limitations, and if the case is reopened pursuant to the terms of the accompanying Order, it is not subject to the statute of limitations time bar if it was originally filed timely. See Houston v. Lack, 487 U.S. 266 (1988) (prisoner mailbox rule); McDowell v. Delaware State Police, 88 F.3d 188, 191 (3d Cir. 1996); see also Williams-Guice v. Board of Education, 45 F.3d 161, 163 (7th Cir. 1995).

## Other Orders/Judgments

3:10-cv-02932-AET -TJB WOMACK v. MOLEINS et al

U.S. District Court

District of New Jersey [LIVE]

### Notice of Electronic Filing

The following transaction was entered on 6/14/2010 at 3:43 PM EDT and filed on 6/14/2010

**Case Name:** WOMACK v. MOLEINS et al

**Case Number:** 3:10-cv-02932-AET -TJB

**Filer:**

**WARNING: CASE CLOSED on 06/14/2010**

**Document Number:** 3

#### Docket Text:

**ORDER that the Clerk shall supply Pltf with a blank IFP application; administratively terminating case; that if Pltf wishes to reopen this action, he shall so notify the Court in writing within 30 days and include either a completed IFP application or the \$350 filing fee; that the Clerk shall serve a copy of this Order upon Pltf via regular mail. Signed by Judge Anne E. Thompson on 6/11/2010. (gxh)**

**3:10-cv-02932-AET -TJB Notice has been electronically mailed to:**

**3:10-cv-02932-AET -TJB Notice will not be electronically mailed to::**

DAVID L. WOMACK  
SBI, 1569275-537775  
NEW JERSEY STATE PRISON  
PO BOX 861  
TRENTON, NJ 08625

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1046708974 [Date=6/14/2010] [FileNumber=4267284-0]  
] [841638871a349fec35cc775825ed03536c9808712584dfd4fab8ea71b50ed9a375  
f3ecde1b37bd96b33dc223a3d06f8ba73e0e496b69a78819cffcd24d4c7e6]]

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

DAVID L. WOMACK,	:	
	:	Civil Action No. 10-2932 (AET)
Plaintiff,	:	
	:	
v.	:	<b>ORDER</b>
	:	
WILLIAM J. MOLEINS, et al.,	:	
	:	
Defendants.	:	<b>CLOSED</b>

For the reasons expressed in the Opinion filed herewith,  
IT IS on this 17<sup>th</sup> day of June, 2010,  
ORDERED that the Clerk of the Court shall supply to  
Plaintiff a blank form Application, for use by a prisoner, to  
Proceed In Forma Pauperis in a Civil Rights Case; and it is  
further

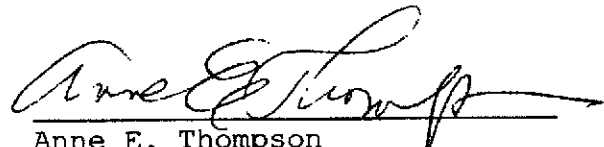
ORDERED that the Clerk of the Court shall administratively  
terminate this case, without filing the Complaint or assessing a  
filing fee; and it is further

ORDERED that if Plaintiff wishes to reopen this action, he  
shall so notify the Court, in writing addressed to the Clerk of  
the Court, Clarkson S. Fisher Building and U.S. Courthouse, 402  
East State Street, Trenton, New Jersey, 08608, within 30 days of  
the date of entry of this Order; Plaintiff's writing shall  
include either (1) a complete in forma pauperis application,  
including an affidavit of indigence and six-month prison account  
statement, certified by the appropriate official of each prison  
at which the prisoner is or was confined, or (2) the \$350 filing



fee; and it is further

ORDERED that the Clerk of the Court shall serve a copy of  
this Order upon Plaintiff by regular U.S. mail.



Anne E. Thompson  
United States District Judge

THIS FORM IS FOR USE BY A PRISONER APPLYING TO PROCEED IN FORMA PAUPERIS IN A CIVIL RIGHTS CASE

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

\_\_\_\_\_  
(Plaintiff in this action)

v.

\_\_\_\_\_  
(Defendant(s) in this action)

: **AFFIDAVIT OF POVERTY  
and ACCOUNT CERTIFICATION  
(CIVIL RIGHTS)**

: Civil Action No. \_\_\_\_\_  
(To be supplied by the Clerk of the Court)

:  
DNJ-Pro Se-007-A-(Rev. 09/09)

**Instructions:**

The Clerk will not file a civil complaint unless the person seeking relief pays the entire filing fee (currently \$350.00) in advance or the person applies for and is granted in forma pauperis status pursuant to 28 U.S.C. § 1915. See Local Civil R. 5.1(f). A prisoner<sup>1</sup> who seeks to proceed in forma pauperis must submit to the Clerk: (1) a completed affidavit of poverty; and (2) a copy of the trust fund account statement for the prisoner for the six month period immediately preceding the filing of the complaint, obtained from and certified as correct by the appropriate official of each prison at which the prisoner is or was confined for the preceding six months. See 28 U.S.C. § 1915(a)(2). When a Judge in the District of New Jersey enters an order granting a prisoner's application to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915(b), the order assesses the current filing fee against the prisoner and collects the fee by directing the agency having custody of the prisoner to deduct an initial partial filing fee equal to 20% of the greater of the average monthly deposits to the prison account or the average monthly balance in the prison account for the six-month period immediately preceding the filing of the complaint, as well as monthly installment payments equal to 20% of the preceding month's income credited to the account for each month that the balance of the account exceeds \$10.00, until the entire filing fee has been paid, regardless of the outcome of the proceeding. See 28 U.S.C. § 1915(b).

The prisoner must complete all questions in the following affidavit, sign and date the affidavit, and then obtain the signature of the appropriate prison official who certifies the prison account statement. After the appropriate prison official certifies your prison trust fund account statement(s), you must attach the prison account statement(s) to this application, for each prison or jail wherein you were incarcerated during the previous six months. If your application to proceed in forma pauperis is incomplete, then the Court may enter an order denying your application without prejudice and administratively terminating your case without filing the complaint.

<sup>1</sup> The term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program. See 28 U.S.C. § 1915(h).

THIS FORM IS FOR USE BY A PRISONER APPLYING TO PROCEED IN FORMA PAUPERIS IN A CIVIL RIGHTS CASE

In support of this application, I state the following under the penalty of perjury:

1. I, \_\_\_\_\_ (print your name), declare that I am the  
☐ Plaintiff / movant ☐ Other

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty, I am unable to prepay the costs of said proceeding or give security therefor; that I believe I am entitled to relief.

2. The nature of my claim or the issues I intend to present on appeal are briefly stated as follows:

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3. List dates and places of confinement for the immediately preceding six months:

Dates of Confinement

Places of Confinement

_____	_____
_____	_____

For each institution in which you have been confined for the preceding six months, you must obtain a copy of your prison account and the signature of the appropriate prison official (see certification on p. 3).

4. Are you employed at your current institution? ☐ Yes ☐ No

Do you receive any payment or money from your current institution? ☐ Yes ☐ No

If Yes, state how much you receive each month: \_\_\_\_\_

5. In the past 12 months, have you received any money from any of the following sources?

			<u>Amount</u>
a.	Business, profession, or other self-employment	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
b.	Rent payments, interest, or dividends	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
c.	Pensions, annuities, or life insurance payments	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
d.	Disability or workers compensation payments	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
e.	Gifts or inheritances	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
f.	Any other sources	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

THIS FORM IS FOR USE BY A PRISONER APPLYING TO PROCEED IN FORMA PAUPERIS IN A CIVIL RIGHTS CASE

6. Other than your prison account, do you have cash or a checking or savings account in your name?

☐ Yes

☐ No

If "Yes," state the total in the account at this time: \_\_\_\_\_

7. Do you own any other assets or property?

☐ Yes

☐ No

If "Yes," please describe: \_\_\_\_\_

\_\_\_\_\_

8. I, \_\_\_\_\_  
(Print or Type Name and Number of Prisoner)

declare under penalty of perjury that the aforesaid statements made by me are true and correct. I authorize the agency having custody over me to assess, withdraw from my prison account, and forward to the Clerk of the District Court for the District of New Jersey (1) an initial partial filing fee equal to 20% of the greater of the average monthly deposits to my prison account or the average monthly balance in my prison account for the six-month period immediately preceding the filing of the complaint, and (2) payments equal to 20% of the preceding month's income credited to my prison account each month the amount in the account exceeds \$10.00, until the \$ 350.-- fee is paid. 28 U.S.C. § 1915(b)(1) and (2).

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF PRISONER

\_\_\_\_\_  
THIS PORTION OF YOUR APPLICATION SHALL NOT BE LEFT BLANK.

IF THIS PORTION IS NOT COMPLETED, YOUR APPLICATION WILL BE DENIED WITHOUT PREJUDICE

**ACCOUNT CERTIFICATION SIGNED BY PRISON OFFICIAL**

I, \_\_\_\_\_ (print name), certify that the attached trust fund account statement (or institutional equivalent) is a true and correct copy.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)